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March 11, 2021

Hon. Denis R. Hurley
United States District Court
940 Federal Plaza
Central Islip, New York 11722

Re: *United States v. Cabasso. et al (Alan Schwartz)*
19 CR 582 (DRH)

Dear Judge Hurley:

Along with John Wallenstein, I represent Alan Schwartz in this case. We write to provide an update of the status of discovery, because we believe that the Court will be better served by having the opportunity to review the details in advance of the upcoming status conference now scheduled for March 18, 2021.

First, the defense has been seeking the data seized from Aventura Technologies, Inc., (the defendant “Aventura”), since at least last summer. We discussed this at the Status Conferences on September 21, 2020 and December 18, 2020. Just yesterday afternoon, the government notified us that a copy of the data is available.

On November 13, 2020, the government agreed to produce the seized data to Aventura if Aventura would deliver a hard drive onto which it could be copied. On November 16, 2020, Aventura produced a suitable drive. On November 25, 2020, the government filed a letter (Dkt. 161) indicating it was producing data to Aventura seized from Microsoft (but not data the government seized from Rackspace US, Inc.).¹ On December 3, 2020, Aventura’s counsel received the drive back from the government. On that date, Samuel Braverman was retained to substitute as counsel for Aventura. He obtained the drive from prior counsel on December 8, 2020. The drive, which contained terabytes of data, was encrypted using the “McAfee” encryption program. That program is not designed for such large data sets, meaning that the data could not be extracted without enormous effort and considerable time. On December 17, 2020, the government

¹ The data seized from Rackspace US, Inc. pursuant to a search warrant has not been produced, nor has the government explained the delay or when it will produce that data.

agreed to copy the data onto an encrypted drive, meaning a hard drive that is encrypted while the files it contains are not. That solution means, we hope, that the contents of the drive will be readable. The defense then bought a 6-terabyte keypad hard drive and sent it to the government on December 30, 2020 by overnight mail. As of February 19, 2021, the government reported that it had not yet begun copying the data onto that drive. As mentioned above, the prosecutors have just announced that the data has been copied onto our encrypted drive. We understand Mr. Braverman asked them to send it to our vendor for further copying. The Court should understand that the data in question is millions of native file format emails, Skype message data and other data that cannot be easily searched or reviewed when it is finally received.

Second, the government finally produced the data referred to in its November 24, 2020 letter (Dkt. 160) earlier this month in a format we can use. In that letter, the government purported to make “available a further production of discovery in accordance with Rule 16” referring to data seized from Aventura’s office and from Microsoft. That data was approximately 1.16 TB in size and contained nearly 2.4 million “image files,” more than 563,000 “text files” and 1,374 “.msg files.” We immediately notified the government that we could not access the material because (as they have known all along) we do not have and cannot afford a search platform such as they are using to review data in so-called “load file” format. We asked for the data in a searchable format, iPro Eclipse Publish (“iPro”) format. The government advised it would let us know when an iPro Eclipse version would be available.

Then, on December 9, 2020, Dupe Coop² said it had received the iPro version of the November 24 production and the defense ordered copies. On December 14, 2020, Dupe Coop notified us that it would take at least an additional week to copy the data for us. On December 18, 2020, the government notified us that the November 24 production was available from Dupe Coop in iPro format referred to as “Production 6.” Our vendor received a copy from Dupe Coop on December 22, 2020. We received copies in early January. After reviewing the data for more than a month, we came to realize that what we paid for was not what it was purported to be. We discovered it was not Production 6 at all, but was, instead, a copy of data sets we had previously received. It took considerable effort (between February 10 and 17, 2021) to determine that we received the wrong data, because the government had sent the wrong data to Dupe Coop. Ultimately, the government agreed that if we were to return the drives we bought, Dupe Coop would provide us with the *real* Production 6. We sent our copies of the drive to Dupe Coop on or about February 17, 2021 and finally received the replacement Production 6 on or about March 3, 2021.

Third, during the December 18, 2020 Status Conference, the government said it would be producing the data to which it referred in its December 17, 2020 letter (Dkt. 164) in iPro format by mid-January. In reality, we ordered this data, called Production 7,

² Dupe Coop is the government’s preferred contractor for copying and disseminating electronic data.

as soon as it was available. Dupe Coop delivered it to our vendor on March 2, 2021; the defendants have not yet received their copies although we expect them shortly.

Finally, the government produced other data sets on February 11, 2021 (Dkt. 169) and February 20, 2021 (Dkt. 173, called Production 8) through its online file transfer system.

Not only has the defense not received the full set of discovery so far, but we believe much more discovery has yet to be identified as discoverable. It will take us months to review the data we have received.

Very truly yours,

/s/ Richard D. Willstatter
RICHARD D. WILLSTATTER

/s/ John S. Wallenstein
JOHN S. WALLENSTEIN

Attorneys for Alan Schwartz